



2024:KER:81805

Crl.M.C.No.1167 of 2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

MONDAY, THE 4<sup>TH</sup> DAY OF NOVEMBER 2024 / 13<sup>TH</sup> KARTHIKA, 1946

CRL.MC NO. 1167 OF 2020

CRIME NO.986/2016 OF Cherpu Police Station, Thrissur  
CC NO.3799 OF 2016 OF JUDICIAL MAGISTRATE OF FIRST  
CLASS -I, THRISSUR

PETITIONER/ACCUSED No.3:

REMA RAGHAVAN  
AGED 61 YEARS  
RESIDING AT FLAT NO.105, B WING, ROYAL GARDEN,  
MUMBAI MUNICIPAL STAFF QUARTERS, DR.A.B ROAD,  
WORLI, MUMBAI-400018.

BY ADVs.S.AMBILY  
MOHAN PILLAI  
MICKY THOMAS

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA  
REPRESENTED BY THE DIRECTOR GENERAL OF  
PROSECUTIONS, HIGH COURT OF KERALA,  
ERNAKULAM-682031.
- 2 VANAJA RAJAN W/O.RAJAN  
AGED 55 YEARS  
POOVATHINGAL HOUSE, KODANNUR, PALLIPURAM, CHERPU,  
THRISSUR, KERALA, INDIA 680561  
BY ADV SRI.PREMCHAND M.-FOR R2

OTHER PRESENT:SMT NIMA JACOB- PUBLIC PROSECUTOR -FOR R1

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
18.10.2024, THE COURT ON 04.11.2024 PASSED THE FOLLOWING:



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**[CR]**

**S.MANU, J.**

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Dated this the 04<sup>th</sup> day of November, 2024

**ORDER**

The third accused in C.C.No.3799/2016 of the Judicial First Class Magistrate's Court-I, Thrissur has filed this Crl.M.C. praying to quash the final report in the case. Offences alleged against the petitioner are under Sections 341, 323, 448, 354 read with Section 34 of IPC. First and second accused in the case are her daughter and son. Late husband of the petitioner has been arrayed as the 4<sup>th</sup> accused with a remark that the charge has abated as against him. The de facto complainant is the mother-in-law of the 1<sup>st</sup> accused.

2. Allegation against the accused is that on 27.12.2015 at about 13.30 hours, they trespassed into the



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sit-out of the residence of the de facto complainant, the 1<sup>st</sup> accused caught hold of her hair and pulled her down, accused 2 to 4 stamped her and also beat her on account of their enmity as the son of the de facto complainant had filed a case for divorce against the 1<sup>st</sup> accused. The alleged date of occurrence was 27.12.2015. However, the FIR was lodged only on 23.6.2016.

3. Learned counsel for the petitioner Sri.Mohan Pillai submitted that the case was registered against the petitioner, her husband and their children only to settle a score with them on account of strained marital relationship with the son of the de facto complainant and the 1<sup>st</sup> accused. He narrated the account of prolonged legal battle undertaken by the parties in various courts in Kerala and Maharashtra. Several cases are pending between the parties even now. Most of the cases are pending before



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different courts in Mumbai. Accused 1 and 2 are working abroad.

4. The learned counsel for the petitioner contended that though the alleged date of occurrence is 27.12.2015, the crime was registered only on 23.6.2016. He pointed out that absolutely there is no cogent explanation offered for the delay involved in lodging the FIR. He referred to the order dated 11.11.2019 in M.C.No.18/2016 of the Judicial First Class Magistrate's Court-I, Thrissur. He pointed out that the very same allegation was raised in the said case filed under the provisions of Protection of Women from Domestic Violence Act, 2005 (hereafter referred as 'Domestic Violence Act' for brevity). The said case was filed by the de facto complainant against the 1<sup>st</sup> accused who is the daughter of the petitioner. First accused was set ex parte in the said proceeding. The de facto complainant was



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examined in the said case. On appreciation of evidence, the learned Magistrate concluded that the allegation of criminal trespass and assault was not proved. The court was of the view that no domestic violence as alleged was established. Therefore, the petition was dismissed. No challenge was made against the order. It has become final. Submission of the learned counsel is that the prosecution launched at the instance of the de facto complainant on the very same set of allegations is not maintainable and on that ground itself it is liable to be quashed.

5. The learned counsel referred to the documents produced as Annexure-IX series which include taxi duty slips, toll receipts, taxi bills, bill for purchase of jewellery and textiles issued at Mumbai on 27.12.2015 to the husband of the petitioner. He contended that the petitioner and her entire family was in Mumbai on the alleged date of



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occurrence busy with preparations for the wedding of the 2<sup>nd</sup> accused son which was solemnized on 30.12.2015. He submitted that the bunch of documents produced as Annexure-IX series would undoubtedly prove that the petitioner and her family members were in Mumbai on the alleged date of occurrence. These documents would show that they were traveling within the city and engaged in shopping for the purpose of the wedding. He further submitted that no one can create such documents including toll receipts so as to raise a plea of alibi and all documents produced as Annexure-IX series are genuine which would cut at the root of the story developed by the de facto complainant.

6. Referring to various orders passed by courts at Mumbai in different proceedings he pointed out that the de facto complainant and her son are retaining about 250



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sovereigns of gold ornaments and a car belonging to the daughter of the petitioner with them. He also argued that retention of ornaments was virtually admitted by the son of the de facto complainant in judicial proceedings. He also pointed out that the competent court has passed interim order in the petition filed by the daughter of the petitioner under the provisions of the Domestic Violence Act for return of ornaments and car. He referred to various orders passed by the trial court, appellate court as also the High Court in the proceedings under the Domestic Violence Act and produced the judgment dated 6.9.2024 of the appellate court in favour of the daughter of the petitioner. He argued that the intention of the de facto complainant and her son is only to harass the petitioner and her family with the ulterior motive of retaining the gold ornaments and the vehicle. He fervently submitted that the facts and



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circumstances of this case undoubtedly show that the prosecution against the petitioner, her daughter and son is stained with malafides and liable to be quashed for the reason that it amounts to abuse of the process of the court.

7. Learned counsel for the petitioner invited attention of this Court to the document produced as Annexure-VII letter dated 15.9.2016 which is a communication from the counsel appearing for the de facto complainant before the courts at Thrissur to the CEO of the company in United States of America in which the daughter and son of the petitioner were working. In the said letter the lawyer has requested the CEO to take action to deport the daughter and son of the petitioner to India citing pendency of the case arising from Crime No.986/2016. The last sentence in the letter is extracted hereunder:-

*"I honestly believe that Mrs.Anu Raghavan and Rakesh Raghvan having connection with many*





*terrorist persons who are having terrorists background.”*

8. He submitted that this letter would prove that the de facto complainant was bent upon harassing the family members of the petitioner and in that pursuit, was ready to go to any extent. He summed up his submissions by referring to various judgments of the Supreme Court to canvass the proposition that belated criminal prosecutions launched with malafide intention which are clearly instances of the abuse of the process of law are liable to be terminated by the High Court in exercise of the inherent powers.

9. The learned counsel for the 2<sup>nd</sup> respondent on the other hand submitted that the attempt of the petitioner is to escape from criminal proceedings by seeking to quash the final report and further proceedings. He submitted that



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the contentions of the petitioner are mostly on the basis of facts which are disputed. He pointed out that the petitioner has produced many documents and raised contentions on various grounds which are according to him matters to be tested in trial. He argued that when the final report discloses materials supporting the offences alleged, it is not open to the court to quash the same and also further proceedings. Regarding the delay involved in registering the FIR learned counsel submitted that the incident was not disclosed to anybody as the de facto complainant felt that it will be shameful. He further contended that the reliance placed by the petitioner on documents produced as Annexure-IX series to claim that the accused were in Mumbai on the date of alleged occurrence cannot be relied upon as documents like taxi bill, bill for purchase of jewellery and textile materials, etc. can be easily



fabricated. He also submitted that contention of alibi is a matter of evidence. The learned counsel concluded by submitting that no ground justifying quashing of proceedings is available in the case and therefore the Crl.M.C. is only to be dismissed.

10. The learned Public Prosecutor also submitted that the proceedings are not liable to be quashed. He relied on a recent judgment of this Court in **Shammil v. State of Kerala** [2024 (5) KLT 449] and submitted that the dismissal of the petition filed by the de facto complainant under the provisions of the Domestic Violence Act on the same set of facts cannot be a ground to quash the criminal proceedings.

11. I have carefully considered the rival contentions and materials on record. A glaring feature of the case is that though the alleged date of occurrence is 27.12.2015,



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the FIR was lodged only on 23.6.2016. On perusal of Annexure-I final report it is noted that no reason for the delay is stated in it. When the issue of delay was addressed by the learned counsel for the party respondent during the hearing, the only explanation offered was that the de facto complainant considered it shameful to report the matter to police. I do not think that the said explanation is acceptable. Even before the alleged date of occurrence the parties were involved in proceedings before the Family Court at Thrissur and Magistrate's Court at Mumbai. In other words, the alleged occurrence was not the first instance of friction. The alleged incident, even going by the version of the de facto complainant was an outburst resulting from the strained relationship. As the parties were fighting each other already in courts it was unnatural for the de facto complainant to hesitate to report the



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occurrence to police. It is also relevant to note that the de facto complainant approached the Judicial First Class Magistrate's Court-I, Thrissur in M.C.No.18/2016 filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005. The main cause of action stated in the said application was the occurrence alleged in the case at hand. From the number assigned to the case, it is clear that the said application might have been filed in the first month of 2016. Therefore, the de facto complainant consulted a lawyer and approached a court of law on the basis of the occurrence alleged in this case early in 2016. Consequently, her explanation that she hesitated to report the matter to the police is not at all credible. It is evident from the order dated 11.11.2019 in M.C.No.18/2016 that the FIR in the case at hand was marked as a document on the side of the petitioner during the trial of the case. Hence, it is clear



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from the facts and circumstances that the de facto complainant who approached the jurisdictional Magistrate's Court with an application under the Domestic Violence Act, approached the police on the basis of same set of allegation much later, after a period of about six months. The lodging of FIR is therefore definitely the result of afterthought. It can be safely assumed that the de facto complainant wanted to strengthen the case filed under the Domestic Violence Act against the petitioner and other family members by approaching the police and getting a crime registered. Want of a credible explanation for the delay points out the lack of bonafides. It is clear that the parties are engaged in legal battles since 2015. Still, according to the petitioner, the ornaments of the daughter of the petitioner and her car are retained by the de facto complainant and her son. It is also relevant to note that the



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dismissal of the application filed under the provisions of the Domestic Violence Act was not challenged by the de facto complainant. Annexure-II order dated 11.11.2019 thus became final. The decision in the said order was permitted to become final by the de facto complainant.

12. As noted above, the learned Public Prosecutor brought to the attention of this Court a recent order of a learned Single Judge of this Court in **Shammil v. State of Kerala** [2024 (5) KLT 449] on the impact of findings in proceedings under the Domestic Violence Act on other parallel proceedings. It has been held by the learned Single Judge that even if a petition filed alleging domestic violence is rejected, that is not a reason to terminate the criminal prosecution initiated for the offence under Section 498A of IPC. Further, the learned Judge has held that the reliefs sought as per the provisions of the Domestic Violence Act is



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not a bar to initiate proceedings before the civil and criminal courts with the same relief. In the light of the law laid down, contention of the learned counsel for the petitioner that this Crl MC is liable to be allowed, even by taking note of Annexure III order rejecting the case of the de facto complainant alone cannot be accepted. Nonetheless, I note that as revealed from the opening paragraph of the reported order, the point decided in the case was whether prosecution initiated for the offence under Section 498A is liable to be quashed when there is a finding by the court that there is domestic violence as defined in the Domestic Violence Act. Therefore it is clear that the prosecution was sought to be quashed in that case solely on the basis of the findings in the proceedings under the Domestic Violence Act. In my view, the law laid down by the learned Single Judge does not preclude this Court





from considering the findings in a proceeding under the Domestic Violence Act and the conduct of the party in accepting the same, as a relevant factor while considering a petition to quash criminal prosecution on the same set of facts. Fact that adverse findings in the proceedings under the Domestic Violence Act on the same set of facts were accepted by the party can be definitely taken into account as a relevant factor when the bonafides of the party, in pursuing parallel criminal proceedings is tested by analysing all relevant and incidental circumstances.

13. It is trite law that delay in lodging the criminal proceedings cannot be considered as a sole ground for quashing the proceedings. However, unexplained delay, when clearly indicates malafides, can be definitely considered as a ground for quashing the proceedings. Furthermore, unexplained delay considered along with



other attendant circumstances and relevant facts involved in a particular case bespeak that the criminal prosecution has been misused as a tool of harassment, the court will be vindicated in taking into account the delay as a relevant factor to justify quashing of proceedings. Reference to the following judgments of the Hon'ble Supreme Court is gainful in this regard.

14. In **Kishan Singh (Dead) through Lrs. v. Gurpal Singh and Ors.** [(2010) 8 SCC 775] the Apex Court held thus:-

*"22. In cases where there is a delay in lodging an FIR, the Court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an after thought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed*



*to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case."*

15. In **Satpal Singh v. State of Haryana** [(2010) 8

SCC 714] it was held as follows:-

*"15. This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of*



*an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety.”*

16. Arguments advanced by the learned counsel for the petitioner relying on Annexure IX series of documents showing the presence of the accused in Mumbai on the alleged date of occurrence was countered by the learned counsel for the respondent stating that the same are manipulated. He also contended that such contentions are matters of evidence. However the assertion that the marriage of the second accused was solemnised on



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30.12.2015 at Mumbai has not been denied. If that be so, it is highly improbable that the entire family members were present at Thrissur, to commit criminal act of assaulting the de facto complainant on 27.12.2015.

17. It is well settled by plethora of judgments of the Apex Court that the inherent power to quash criminal proceedings shall be exercised by the High Courts only with caution and circumspection. Court shall be loath to terminate the proceedings when final reports disclose the ingredients of the offences alleged. However, when malafide is manifest, delay in reporting the alleged crime is unexplained, allegations are inherently improbable and it is obvious that the criminal law machinery has been subjected to abuse with the malicious intention to harass the accused out of vengeance or with ulterior motives, the High Court can accept the plea to quash the proceedings.



18. In **State of Haryana and others v. Bhajan Lal and others** [1992 Suppl. (1) SCC 335] the Hon'ble Supreme Court identified seven categories of cases by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure could be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. Category 7 reads as follows:-

*"(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

In the case at hand the grudge of the de facto complainant and the intention to harass the accused are well evident. Annexure VII letter sent by her lawyer, obviously at her instance, to the CEO of the company in which the daughter



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and son of the petitioner were working, alleging even terror links against them is sufficient to justify this conclusion.

19. It is also relevant to note the following observation of the Hon'ble Supreme Court in **Hasmukhlal D.Vora & another v. State of Tamil Nadu** [(2022) 15 SCC 164]:-

*"26. At the cost of repetition, we again state that the purpose of filing a complaint and initiating criminal proceedings must exist solely to meet the ends of justice, and the law must not be used as a tool to harass the accused. The law, is meant to exist as a shield to protect the innocent, rather than it being used as a sword to threaten them.*

### **Conclusion**

*27. It must be noted that the High Court while passing the impugned judgment has failed to take into consideration the facts and circumstances of the case. While it is true that the quashing of a criminal complaint must be done only in the rarest of rare cases, it is still the duty of the High Court to look into each and every case with great detail*



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*to prevent miscarriage of justice. The law is a sacrosanct entity that exists to serve the ends of justice, and the courts, as protectors of the law and servants of the law, must always ensure that frivolous cases do not pervert the sacrosanct nature of the law.”*

20. For the reasons discussed above, I conclude that the instant case is an eminently fit one to quash the proceedings, in order to prevent abuse of the process of court. The Crl.M.C. is therefore allowed. Final Report in Crime No.986/2016 of Cherpu Police Station, Thrissur and proceedings in C.C.No.3799/2016 on the file of the Judicial First Class Magistrate's Court-I, Thrissur are quashed.

Sd/-  
**S.MANU**  
**JUDGE**

skj





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APPENDIX OF CRL.MC 1167/2020

**PETITIONER'S ANNEXURES**

- ANNEXURE I** CERTIFIED COPY OF THE FINAL REPORT IN  
CC 3799/2016 DATED 30.11.2016
- ANNEXURE II** COPY OF THE ORDER OF JMFC-1 IN M.C 18/2016  
DATED 11.11.2019
- ANNEXURE III** COPY OF THE ORDER OF 62<sup>nd</sup> METROPOLITAN  
MAGISTRATE COURT, MUMBAI ON 60/DV/2016  
DATED 6-8-2016
- ANNEXURE IV** COPY OF THE JUDGMENT IN CR.M.C NO.5028/2016  
OF THIS COURT DATED 28.10.2019
- ANNEXURE V** COPY OF THE COMMISSION REPORT FILED IN IA  
NO.2008/2015 OS .1902/14 FAMILY COURT,  
THRISSUR DATED 23.05.2015
- ANNEXURE VI** COPY OF THE ORDER OF FAMILY COURT, THRISSUR  
IN IA 5947/2017 IN OP NO.578/2016  
DATED 28.11.2017
- ANNEXURE VII** COPY OF THE LETTER BY COUNSEL FOR THE 2ND  
RESPONDENT 15.09.2016
- ANNEXURE VIII** COPY OF THE ORDER PASSED BY THE 62ND  
METROPOLITAN MAGISTRATE COURT, MUMBAI IN  
63/PW/2018 DATED 16.10.2019
- ANNEXURE IX** DOCUMENTS SHOWING THE PRESENCE OF PETITIONER  
AND/OR OTHER ACCUSED IN MUMBAI ON 27.12.2015
- Annexure X** TRUE COPY OF THE COURT PROCEEDINGS OF THE  
COURT OF THE ADDITIONAL SESSIONS COURT  
DATED 06.09.2024 IN CRL APPEAL/0100144/2023



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- Annexure XI** TRUE COPY OF THE JUDGMENT OF THE HIGH COURT OF BOMBAY IN WRIT PETITION NO.4719/2017 DATED 17.10.2022
- Annexure XII** TRUE COPY OF THE ORDER PASSED BY THE 62ND METROPOLITAN MAGISTRATE COURT BHOIWADA, MUMBAI ON 06/02/2023
- Annexure XIII** TRUE COPY OF THE ORDER OF THE COURT OF SESSIONS FOR GREATER BOMBAY IN CRL APPEAL 719/2017 DATED 04.09.2017
- Annexure XIV** TRUE COPY OF THE ORDER OF THE METROPOLITAN MAGISTRATE DATED 06.08.2016 IN C C NO.60/ (DV)/2015
- Annexure XV** TRUE COPY OF THE ORDER OF THE HIGH COURT OF BOMBAY DATED 1.08.2023 IN WRIT PETITION 2278/2018
- Annexure XVI** TRUE COPY OF THE JUDGMENT OF THE COURT OF SESSIONS FOR GREATER MUMBAI IN CRL.APPEAL(DV) NO.144/2023 DATED 06.09.2024